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Environmental Quality Commission

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Scott Smith, Chair, *Lexington*
Gordon Garner, Vice-Chair, *Prospect*
Andrew Ernest, *Bowling Green*
Laura Knoth, *Grand Rivers*
Kimberly McCann, *Ashland*
Stephanie McSpirit, *Richmond*
Eugene Zick, *Russellville*

**KENTUCKY ENVIRONMENTAL QUALITY COMMISSION
PUBLIC FORUM**

Meeting Minutes

May 28, 2008

Sanitation District #1 Board Room
Fort Wright, Kentucky

EQC Commissioners Present

Scott Smith, Chair
Gordon Garner, Vice Chair
Andrew Ernest
Kim McCann
Stephanie McSpirit

EQC Staff Present

Arnita Gadson, Executive Director
Johnna McHugh, Director of Operations
LaTisha Barnett, Executive Secretary

Speakers/Representatives Present

Secretary Leonard Peters, Energy and Environment Cabinet
Sandy Gruzesky, Division of Water
Tom C. VanArsdall, Division of Water
Cassandra Jobe, Division of Waste Management
John Lyons, Division for Air Quality
Carl Campbell, Department for Natural Resources
Jim Gibson, Sanitation District 1 (SD1)
Charles Martin, Lexington-Fayette Urban County Government (LFUCG)

The Environmental Quality Commission (EQC) held a public forum on March 28, 2008 with 35 people in attendance. The meeting was called to order at 6:30p.m.

Commissioner Smith began the meeting by welcoming the commission's two newest members, Kim McCann of Ashland and Stephanie McSpirit of Richmond to their first public forum. Smith introduced Horace Brown who presented the former EQC Executive Director, Jo Hargis, with one of his prized framed pictures for her service with the commission. Hargis expressed her appreciation for the recognition.

Smith asked commissioners to approve the minutes from the February 6, 2008 meeting. A motion to accept the minutes was made by Commissioner Andrew Ernest and seconded by Commissioner Gordon Garner. The motion was passed unanimously, and the minutes were accepted.

Smith then introduced Dr. Leonard Peters, the new Secretary of the Energy and Environment Cabinet (EEC). He was asked to present the vision of the new cabinet. Secretary Peters, an atmospheric chemist, identified the size of the current Environmental and Public Protection Cabinet (EPPC) as the reason for the cabinet division

The mission of the EEC is to protect the environment and address energy issues. Challenges at this time are budget cuts and retirement. One out of seven people in the current EPPC are eligible for retirement by Dec. 31, 2008, Energy and environmental issues discussed were:

- carbon reduction,
- legislation to address climate change,
- advancing Energy Star projects,
- renewables reliability,
- new technology usage and
- maintaining open dialogue with the governor and the EQC.

Dr. Peters' official start date as the secretary of the EEC is June 15, 2008. More details will be forthcoming within the next week.

Garner asked about the priorities of the cabinet. Secretary Peters mentioned that energy and conservation go hand and hand. Ernest mentioned to Secretary Peters that the cabinet doesn't have an energy plan or policy. There are a few laws with incentives for doing certain things. Secretary Peters said we need to find ways to use natural resources such as coal more efficiently.

Sandy Gruzesky, Director of the Division of Water (DOW), explained that federal regulations require that state agencies establish procedures for public notice in the case of all applications for 401 certification. All surrounding states charge fees for 401 certification. Gruzesky explained that two regulations, the 401 Water Quality Certification and the Confined Animal Feeding Operations (CAFO), establish procedures for public notice. The Kentucky Pollutant Discharge Elimination Systems (KPDES) sets fees to partially cover the costs of implementing the certification program.

Smith asked for specifics about the Water Quality Certification fees. Gruzesky stated that this question was asked during the public comment period for this regulation and will be addressed in the Statement of Consideration. Smith suggested that DOW research how the state of Ohio handled public notice for their emergency regulation.

Tom C. VanArsdall, Branch Manager of DOW's Water Quality Branch discussed water quality standards. These regulations will be filed in June, and the public comment period will continue through the end of July. The DOW is making important changes to 401 KAR 5:026, including an additional 233 outstanding state resource waters (OSRW) and nine new listings for threatened and endangered species.

McSpirit asked why the default use classifications are being removed from the table in this regulation. VanArsdall stated that this was done to clean up the table and highlight the changes. Ernest asked about use classifications and was informed that two streams are being taken off warm water aquatic habitat use.

VanArsdall then discussed 401 KAR 5:030 on antidegradation policy implementation. Five new National Resource waters and 37 new exceptional waters were added based on recent monitoring.

Next, VanArsdall discussed the 401 KAR 5:031 Surface Water Standards. According to VanArsdall, the criteria will be updated based on final recommendations by EPA published in the Federal Register since the last triennial review. He also pointed out that methylmercury criteria have been added for fish tissue.

McSpirit asked about the methylmercury criteria. She was informed that the criterion of 0.3 ppm is a risk-based advisory number. Upon her question about monitoring, VanArsdall outlined what samples are taken and how often they are taken in order to cover the state requirements.

Cassandra Jobe of the Division of Waste Management (DWM) discussed changes made to 12 Hazardous Waste regulations. Most of the changes to these regulations are to make them consistent with the corresponding federal regulations. They are as follows:

- 401 KAR 32:010 made changes to a form, adding lines for information regarding legal ownership and land ownership.
- 401 KAR 32:050 added five new terms, and the applicability of the first section was clarified.
- 401 KAR 34:005 added six new terms that are identical to federal definitions.
- 401 KAR 34:080 added an exception in the applicability section and allows the cabinet to approve alternative financial requirements if there is adequate protection of human health and the environment.
- 401 KAR 35:005 added three definitions that are consistent with the federal regulations.
- 401 KAR 35:080 added an exception in the applicability section and allows the Cabinet to approve alternative financial requirements if there is adequate protection of human health and the environment.
- 401 KAR 36:030 had a correction of a typographical error in section 4.

- 401 KAR 37:005 added eight definitions that are consistent with the federal regulations.
- 401 KAR 37:040 has a correction to a reference in section 1.
- 401 KAR 38:005 added sixteen definitions.
- 401 KAR 38:040 made a clarification of the Appendix in section 1.
- 401 KAR 43:005 added four definitions consistent with the federal regulations.

Smith recommended that DWM reconsider the definition of “substantial business relationship” as the current definition requires the relationship to be demonstrated to the satisfaction of the cabinet.

Jobe continued, other DWM regulations that are expected this year include a new regulation regarding methamphetamines (expected to file Oct. 1), updated solid waste regulations (expected to file August or September) and incorporated federal policy in underground storage tank regulations (expected to file Sept. 1).

John Lyons, Director of the Division for Air Quality (DAQ), presented DAQ regulation revisions. DAQ went through a major revision process last year. Revisions include:

- Transportation Conformity Rule – 401 KAR 50:066. This will be amended to include consultation procedures as required. The goal is to file amendments to LRC by May 15, 2008.
- Attainment Status Designations: 401 KAR 51:010 and Ambient Air Quality Standards: 401 KAR 53:010. The first will be amended to correspond with 40 CFR 81:318. The second will be amended to include the standards for PM2.5 and 8-hour ozone. The goal is to file amendments with LRC by June 15, 2008.
- Repeal of 401 KAR 60:020, Clean Air Mercury Rules (CAMR). CAMR was vacated by the D.C. court of Appeals on March 14, 2008. EPA filed a petition for rehearing on March 24, 2008, however, the petition for rehearing was denied on May 20, 2008. DAQ intends to file the repeal by June 15, 2008.

Smith asked if the county officials are aware of the changing nonattainment rules, and Lyons assured him that DAQ officials are traveling across the state to explain.

Carl Campbell of the Department for Natural Resources briefed the commissioners on the following budget changes and concerns:

- Some funding is matched by the federal government. If DNR loses funds from the state, they will also lose funds from the federal government.
- Retirement - There were 52 retirements in 2007, 23 in 2008, and possibly 43 more by the end of CY08.
- Bad operators mining under multiple permits.

- Enforcing approximate original contour rules in mountaintop removal mining.
- Dealing with transportation issues on haul roads, enforcing the stream buffer zone.
- Addressing blasting and fly rock problems.

Campbell did have good news to report. The abandoned mine lands (AML) program has changed giving DNR an opportunity to receive more grants in the future. Smith recommended that DNR and DEP work together to make sure AML water lines are put in areas where they are needed.

Jim Gibson of Sanitation District 1 in Ft. Wright discussed challenges SD1 has faced and offered solutions to the commission. The challenges included:

- Combined sewer overflows (1.4 billion gallons annually),
- Impact of stream erosion on sanitary sewers,
- Impact of stream erosion on roadways/bridges,
- Impact of new CSO development, and
- SD1's Consent Decree.

Solutions offered include

- Gray infrastructure;
- Green infrastructure (including permeable concrete, stream restoration, biofiltration swales, cisterns, wetlands, vegetative roofs);
- Watershed management approach; and
- Watershed application

Gibson also outlined the Banklick Pilot Project, which test drives their proposed watershed framework, prepares for system wide analysis, and identifies challenges for watershed plans.

Charles Martin, Director of the Lexington-Fayette Urban County Government (LFUCG) Division of Water Quality, presented the commission with LFUCG's Consent Decree implementation information.

According to the consent decree, LFUCG must complete obligations dealing with sanitary sewer issues; storm water issues; and supplemental projects including the Coldstream Park Corridor preservation and restoration, green infrastructure projects, Blue Sky Waste Water Treatment Plant elimination and flooding abatement projects.

The floor was then open to the public to address the commissioners with their issues and/or concerns.

Tim Guilfoile spoke to the commissioners regarding mercury, a very powerful neurotoxin. According to Guilfoile, Kentucky should mandate total mercury control measures, and he implored the EQC to take a position on mercury.

Betsy Bennett spoke on behalf on the Sierra Club. The Sierra Club is having a conference on Sept. 6 in Louisville. She reported that the Sierra Club's emphases this year will be Combined Animal Feeding Operations and coal-related issues.

Hank Graddy briefly spoke and gave the commissioners a letter regarding the Watershed Watch in Kentucky designating 2008 as "The Year of the Ohio River". This letter was sent to Sec. Vance.

There was a 5 minute break and then the Commission proceeded with other EQC business. Copies of the open meetings policy were distributed to the Commissioners for compliance requirements of the Open Meetings Policy. The commissioners were asked to review these rules before the annual planning meeting. Arnita Gadson advised the commissioners of the current lawsuit between a Floyd's Fork community group and the Kentucky Waterways Alliance. The EQC is mentioned in the suit.

Gadson then spoke about the Governor's Conference on the Environment. She suggested that the EQC either host a mayor's summit in conjunction with the Governor's Conference or with a mayor's meeting that's being planned by the Kentucky League of Cities in Louisville. The commission agreed that Gadson should plan the mayor's conference with whichever meeting would give the greatest turnout.

Gadson also discussed the EQC applying for grants. The commission has received grants before, mostly for project-related reasons. Gadson will look into finding grants which can help the EQC with extra projects and meetings that cannot be funded due to budget cuts.

Smith discussed the State of Kentucky's Environment report. He stated that he can find the money to print it again. He'd like the EQC to starting putting out a report of some kind, possibly a hybrid of the past State of Kentucky's Environment reports and last year's Reference Document.

McSpirit wants DAQ, DOW and Cabinet for Health and Family Services to talk about mercury. Ernest agreed, and moved for a meeting on the topic of mercury in the next six months. McSpirit seconded, and the motion passed unanimously. There was discussion of EPA taking a lead role in forming a Total Maximum Daily Load (TMDL) for mercury. The EQC should request an EPA representative to attend the mercury meeting.

The next EQC meeting will be our annual planning session. A tentative date was set for July 28-29 at Lake Cumberland. Johnna McHugh will contact the commissioners about specific dates, times, and locations, depending on availability of funds and sites.



A motion to adjourn the forum was made by Ernest and seconded by McCann.
The motion was passed unanimously and the forum was adjourned at 9:40p.m.

Signed,

Scott Smith, EQC Chair
August 4, 2008